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FYI

HUNTON & WILLIAMS

M E M O R A N D U M

TO: Distribution

DATE: December 1, 1993

FROM: Donald Fried

FILE: 39514.000372

Re: Philip Morris Companies Inc.;
1994 Annual Meeting; Shareholder Proposals

At today's meeting with the Securities Law Committee of the American Society of Corporate Secretaries, Bill Morley, Senior Associate Director-Operations of the SEC's Division of Corporation Finance, reported that Judge Kimba Wood has still not issued an opinion in the Cracker Barrel Case and that, as a result, the SEC would not file its brief on December 3, the original due date. There is some feeling that the 2nd Circuit's recent decision in *White et al. v. Shalala*, a copy of which is enclosed and which appears to support the SEC's position in Cracker Barrel (see pp. 9 and 10), is proving troublesome to Judge Wood.

Morley reaffirmed the Commission's no (c)(7) no action letter policy until resolution of the Cracker Barrel Case or at least clarification or lifting of the injunction. He emphasized the need for issuers to file with the Commission under Rule 14a-8(d) a statement of the issuer's reasons for excluding a proposal from its proxy statement and, where appropriate, to specify (c)(7) as a basis for the exclusion even when it appears that the Staff will not act upon the filing. He confirmed that such a filing would enable management to use its discretionary proxy authority to vote against the proposal at the meeting even if the proposal were omitted from the proxy statement. However, should the proponent institute litigation, a court could force a resolicitation of proxies accompanied by a proxy statement which included the proposal.

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